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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 110210132-1275-02]

RIN 0648-XA842

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic tunas General category daily retention limit of Atlantic bluefin tuna (BFT) should be adjusted for the January 2012 subquota period, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels (when fishing commercially for BFT).

DATES: Effective January 1, 2012, through March 31, 2012.

FOR FURTHER INFORMATION CONTACT: Tom Warren or Sarah McLaughlin, 978-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 et seq.) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 et seq.)

governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and subsequent rulemakings.

The 2012 BFT fishing year, which is managed on a calendar year basis and subject to an annual calendar year quota, begins January 1, 2012. Starting on January 1, 2012, the General category daily retention limit (§ 635.23(a)(2)) reverts back to the default retention limit of one large medium or giant BFT (measuring 73 inches (185 cm) CFL) or greater per vessel per day/trip under the regulations unless otherwise provided. This default retention limit applies to General category permitted vessels and HMS Charter/Headboat category permitted vessels (when fishing commercially for BFT).

Each of the General category time periods (January, June-August, September, October-November, and December) is allocated a portion of the annual General category quota, thereby ensuring extended fishing opportunities throughout the fishing season, particularly in years when catch rates are high. For the 2011 fishing year to date, NMFS adjusted the General category limit from the default level of one large medium or giant BFT as follows: two large medium or giant BFT for January (75 FR 79309, December 20, 2010); three large medium or giant BFT for June through August (76 FR 32086, June 3, 2011); three large medium or giant BFT for September through November 5, 2011 (76 FR 52886, August 24, 2011); and two large medium or giant BFT for November 6 through December 31, 2011 (76 FR 69137, November 8, 2011).

The November 6, 2011, adjustment to a limit of two large medium or giant BFT was in conjunction with an inseason quota transfer of 50 mt from the Reserve category to the General category.

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for both 2011 and 2012 of 923.7 mt (not including a 25-mt allocation that the United States uses to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area (NED)). Consistent with the allocation scheme established in the Consolidated HMS FMP, the baseline 2012 General category share would be 435.1 mt, and the baseline 2012 January General category subquota would be 23.1 mt.

In order to implement the ICCAT recommendation for 2012, NMFS is planning to publish proposed quota specifications in the beginning of 2012 to set BFT quotas for each of the established domestic fishing categories. Until the 2012 quota specifications are finalized (most likely in the spring of 2012), the January General category baseline quota of 23.1 mt (established for 2011) remains in effect. In the meantime, the General category BFT fishery remains active into the winter, with landings reported in November and December.

Adjustment of General Category Daily Retention Limits

Under current regulations (50 CFR 635.23(a)(4)), NMFS may increase or decrease the daily retention limit of large medium and giant BFT over a range of zero to a maximum of five per vessel based on consideration of the criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the

projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds. A recent regulatory amendment (76 FR 74003, November 30, 2011), increased the maximum possible daily retention limit to 5 fish. Although the default end of the January subquota period is January 31, 2012, the regulatory amendment also extends the allowable duration of the January subquota period until the January subquota has been harvested or March 31, 2012, whichever comes first.

NMFS has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the January 2012 General category fishery. A principal consideration is the objective of providing opportunities to harvest the full January subquota, without exceeding it based upon the Consolidated HMS FMP goal: "Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems". The January subquota has been underharvested in recent years. Under the two fish limit that applied during January 2011, January landings were 34

percent of the subquota (7.9 mt out of the baseline January subquota of 23.1 mt). Similarly, during the 2010 January subquota period, under a two fish limit, 11 percent of the baseline January subquota was harvested (2.7 mt out of the baseline January subquota of 23.8 mt). Based upon the ICCAT recommended quota, the baseline 2012 General category January subquota would also be 23.1 mt. Therefore, based on these criteria, NMFS has determined that the General category retention limit should be increased from the one fish default limit.

Accordingly, NMFS increases the General category retention limit to two large medium or giant BFT, measuring 73 inches CFL or greater, per vessel per day/trip, effective January 1, 2012, through March 31, 2012, or until the January subquota is harvested, whichever comes first.

Although NMFS has the authority to set the daily retention limit higher than two BFT, under a relatively high limit (and fish availability), the rate of harvest of the January subquota could be accelerated and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas. Therefore, in order to maintain an equitable distribution of fishing opportunities, a retention limit closer to the low end of the allowable range of retention limits (i.e., two fish) is warranted. A potential ancillary benefit from a subquota period that is open for an extended duration is that any scientific information (including biological samples) collected from BFT may be from fish collected over a broader temporal and geographic range than currently sampled. Lastly, fishery participants have supported this retention limit in prior seasons.

This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT. Regardless of the duration of

a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing.

This adjustment is intended to provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the Consolidated HMS FMP.

Monitoring and Reporting

NMFS selected the daily retention limit for January 2012 after examining an array of data as it pertains to the determination criteria. These data included, but were not limited to, current and previous catch and effort rates, quota availability, previous public comments on inseason management measures, and stock status. NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that future adjustments to the retention limit are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closure of the General category or subsequent adjustments to the daily retention limit, if any, will be published in the Federal Register. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872-8862 or (978) 281-9260, or access www.hmspermits.gov, for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement these retention limits is impracticable as it would preclude NMFS from acting promptly to allow harvest of BFT that are available on the fishing grounds. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective January 1, 2012, to minimize any unnecessary disruption in fishing patterns and for the impacted sectors to benefit from the adjustments so as to not preclude fishing opportunities for fishermen who have access to the fishery only during this time period.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For these reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 et seq. and 1801 et seq.

Dated: December 6, 2011

Steven Thur,
Acting Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

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